

§ 2.1007

(2) To the Pre-License Application Presiding Officer or to the Presiding Officer, for entry into a Protective Order file, if the Pre-License Application Presiding Officer or the Presiding Officer so directs under §§ 2.1010(b) or 2.1018(c).

(c) Notwithstanding any availability of the deliberative process privilege under paragraph (a) of this section, circulated drafts not otherwise privileged shall be provided for electronic access pursuant to § 2.1003(a).

[63 FR 71738, Dec. 30, 1998; 64 FR 15920, Apr. 2, 1999, as amended at 69 FR 2265, Jan. 14, 2004]

§ 2.1007 Access.

(a)(1) A system to provide electronic access to the Licensing Support Network shall be provided at the headquarters of DOE, and at all DOE Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, beginning in the pre-license application phase.

(2) A system to provide electronic access to the Licensing Support Network shall be provided at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room beginning in the pre-license application phase.

(3) [Reserved]

(b) Public availability of paper and electronic copies of the records of NRC and DOE, as well as duplication fees, and fee waiver for those records, is governed by the regulations of the respective agencies.

[63 FR 71738, Dec. 30, 1998, as amended at 64 FR 48949, Sept. 9, 1999]

§ 2.1008 [Reserved]

§ 2.1009 Procedures.

(a) Each potential party, interested governmental participant, or party shall—

(1) Designate an official who will be responsible for administration of its responsibility to provide electronic files of documentary material ;

(2) Establish procedures to implement the requirements in § 2.1003;

(3) Provide training to its staff on the procedures for implementation of the responsibility to provide electronic files of documentary material;

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(4) Ensure that all documents carry the submitter's unique identification number;

(5) Cooperate with the advisory review process established by the NRC under § 2.1011(d).

(b) The responsible official designated under paragraph (a)(1) of this section shall certify to the Pre-License Application Presiding Officer that the procedures specified in paragraph (a)(2) of this section have been implemented, and that to the best of his or her knowledge, the documentary material specified in § 2.1003 has been identified and made electronically available. The initial certification must be made at the time the participant is required to comply with § 2.1003. The responsible official for the DOE shall also update this certification at the time DOE submits the license application.

[63 FR 71738, Dec. 30, 1998, as amended at 66 FR 29466, May 31, 2001]

§ 2.1010 Pre-License Application Presiding Officer.

(a)(1) The Commission may designate one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority on the matter to serve as the Pre-License Application Presiding Officer to rule on disputes over the electronic availability of documents during the pre-license application phase, including disputes relating to privilege, and disputes relating to the implementation of the recommendations of the Advisory Review Panel established under § 2.1011(d).

(2) The Pre-License Application Presiding Officer shall be designated at such time during the pre-license application phase as the Commission finds it appropriate, but in any event no later than fifteen days after the DOE certification of initial compliance under § 2.1009(b).

(b) The Pre-License Application Presiding Officer shall rule on any claim of document withholding to determine—

(1) Whether it is documentary material within the scope of this subpart;

(2) Whether the material is excluded under § 2.1005;

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(3) Whether the material is privileged or otherwise excepted from disclosure under §2.1006;

(4) If privileged, whether it is an absolute or qualified privilege;

(5) If qualified, whether the document should be disclosed because it is necessary to a proper decision in the proceeding;

(6) Whether the material should be disclosed under a protective order containing such protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to potential participants, interested governmental participants and parties in the proceeding, or to their qualified witnesses and counsel. When Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act of 1954, as amended, is received and possessed by a potential party, interested governmental participant, or party, other than the Commission staff, it shall also be protected according to the requirements of §73.21 of this chapter. The Pre-License Application Presiding Officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the Pre-License Application Presiding Officer for violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act of 1954, as amended, the entity in violation may be subject to a civil penalty imposed pursuant to §2.205. For the purpose of imposing the criminal penalties contained in section 223 of the Atomic Energy Act of 1954, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information shall be deemed to be an order issued under section 161b of the Atomic Energy Act of 1954, as amended.

(c) Upon a final determination that the material is relevant, and not privileged, exempt from disclosure, or otherwise exempt from production under §2.1005, the potential party, interested

governmental participant, or party who asserted the claim of withholding must make the document available in accordance with the provisions of this subpart within five days.

(d) The service of all pleadings and answers, orders, and decisions during the pre-license application phase shall be made according to the procedures specified in §2.1013(c) and entered into the pre-license application electronic docket.

(e) The Pre-License Application presiding officer possesses all the general powers specified in §§2.319 and 2.321(c).

(f) The Commission, in designating the Pre-License Application Presiding Officer in accordance with paragraphs (a) (1) and (2) of this section, shall specify the jurisdiction of the Officer.

[63 FR 71738, Dec. 30, 1998, as amended at 66 FR 29466, May 31, 2001; 69 FR 2265, Jan. 14, 2004]

§2.1011 Management of electronic information.

(a) Electronic document production and the electronic docket are subject to the provisions of this subpart.

(b)(1) The NRC, DOE, parties, and potential parties participating in accordance with the provision of this subpart shall be responsible for obtaining the computer system necessary to comply with the requirements for electronic document production and service.

(2) The NRC, DOE, parties, and potential parties participating in accordance with the provision of this subpart shall comply with the following standards in the design of the computer systems necessary to comply with the requirements for electronic document production and service:

(i) The participants shall make textual (or, where non-text, image) versions of their documents available on a web accessible server which is able to be canvassed by web indexing software (i.e., a "robot", "spider", "crawler") and the participant system must make both data files and log files accessible to this software.

(ii) The participants shall make bibliographic header data available in an HTTP (Hypertext Transfer Protocol) accessible, ODBC (Open Database Connectivity) and SQL (Structured Query Language)-compliant (ANSI